

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

CASEY MICHAEL REINERT,
Petitioner.

No. 2 CA-CR 2016-0030-PR
Filed March 25, 2016

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
NOT FOR PUBLICATION
See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Crim. P. 31.24.

Petition for Review from the Superior Court in Yavapai County
No. P1300CR201200847
The Honorable Tina R. Ainley, Judge

REVIEW GRANTED; RELIEF DENIED

COUNSEL

Sheila Sullivan Polk, Yavapai County Attorney
By Kevin D. Schiff, Deputy County Attorney, Prescott
Counsel for Respondent

C. Kenneth Ray II, P.C., Prescott
By C. Kenneth Ray II
Counsel for Petitioner

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MEMORANDUM DECISION

Chief Judge Eckerstrom authored the decision of the Court, in which Presiding Judge Vásquez and Judge Miller concurred.

E C K E R S T R O M, Chief Judge:

¶1 Petitioner Casey Reinert seeks review of the trial court’s order denying his petition for post-conviction relief, filed pursuant to Rule 32, Ariz. R. Crim. P. “We will not disturb a trial court’s ruling on a petition for post-conviction relief absent a clear abuse of discretion.” *State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). Reinert has not sustained his burden of establishing such abuse here.

¶2 Pursuant to a plea agreement, Reinert was convicted of aggravated driving with an alcohol content of .15 or more, endangerment, and two counts of manslaughter. The trial court imposed consecutive and concurrent sentences totaling twenty-eight years’ imprisonment.

¶3 Reinert thereafter initiated a proceeding for post-conviction relief, arguing in his petition that his sentences were improperly aggravated and that he should not have received consecutive sentences. The trial court summarily denied relief.

¶4 On review, Reinert repeats his arguments and asks this court to vacate his sentences and order resentencing. Reinert first contends the trial court wrongfully imposed sentences greater than the presumptive. The court imposed maximum sentences on Reinert’s convictions for aggravated DUI and endangerment and “slightly aggravated” sentences on his manslaughter convictions. It ordered the manslaughter and endangerment sentences to be served consecutively, with the sentence for aggravated DUI served concurrently.

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¶5 In order to impose a sentence greater than the presumptive, but not more than the maximum term, the trial court was required to find one statutorily enumerated aggravating factor. *See State v. Bonfiglio*, 231 Ariz. 371, ¶¶ 8-9, 295 P.3d 948, 950 (2013). It did so, finding emotional harm to the victims' family. *See* A.R.S. § 13-701(D)(9). Reinert argues that the harm to the family was required to be "unusual" and that the harm suffered in this case was "the type and degree of harm as would ordinarily be expected." This argument is entirely without merit. Emotional harm to the victim or the victim's family is an enumerated aggravating circumstance; thus, even were it an element of the offenses here it could be considered in aggravation, even if no harm greater than that required to commit the offense were caused. *See State v. Germain*, 150 Ariz. 287, 290, 723 P.2d 105, 108 (App. 1986). It is only when an aggravating factor is an element of an offense and is not specifically enumerated as an aggravating factor that something more than that necessary to establish the offense might be required. *Id.* Such is not the case here.

¶6 Reinert also argues the trial court erred in imposing consecutive prison terms. He concedes "Arizona law does not support this contention," but argues "Arizona law in this regard warrants reconsideration and change," particularly in his case because he received twenty-eight "years[]" imprisonment for a sing[le] act of reckless behavior." But our supreme court has determined that consecutive sentences are allowable when offenses are committed against multiple victims. *See, e.g., State v. Hampton*, 213 Ariz. 167, ¶ 65, 140 P.3d 950, 965 (2006). "This court is bound by decisions of the Arizona Supreme Court and has no authority to overturn or refuse to follow its decisions." *State v. Long*, 207 Ariz. 140, ¶ 23, 83 P.3d 618, 623 (App. 2004).

¶7 We also reject Reinert's suggestion that his sentence was disproportionate to his offenses. His "sing[le] act" of reckless behavior resulted in the death of two people. In view of the circumstances of the case, Reinert has not explained how his sentence is "grossly disproportionate to the offense." *State v. Davis*, 206 Ariz. 377, ¶ 34, 79 P.3d 64, 71 (2003).

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¶8 For these reasons, although we grant the petition for review, we deny relief.